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REMARKS

Claims 1 – 21 of the above-identified application were rejected during prosecution of the above identified patent application before a Request for Continuation Examination was filed on June 29, 2006. More specifically, after a final Office Action dated January 17, 2006 applicant filed a Rule 1.116 Amendment that, in accordance with the Advisory Action of April 25, 2006, was not entered on the record. Applicant understands that the claims and remarks submitted in applicant's previous Rule 1.116 Amendment are now included in the record.

The present amendment places the claims submitted with the Rule 1.116 Amendment into better form and broadens the scope of previously pending Claim 1 in a manner consistent with the original disclosure. For this reason it was considered desirable to cancel the existing claims and to replace them with "formally" new claims which, except for present Claim 22, substantively correspond to the claims submitted with the Rule 1.116 Amendment.

Rejection of the claims over prior art has been overcome or is inapplicable to the present claims

For the purposes of the present discussion applicant discusses the three major references applied against the claims during prosecution and points out the significant differences between their subject matter and the present claims.

Claims were rejected in the Office Action dated August 12, 2005 over United States Patent No. 6,482,461 (*Teh et al.*) The *Teh et al.* reference discloses frying or air drying strips to provide noodles. The reference states that the dough (before frying or drying) may contain sodium carbonate, or potassium carbonate. The reference does not instruct about the dough before frying or air drying, nor of the pH of the fried or air dried noodles obtained as the end product.

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The present claims specify that the pH of the fried noodles is 6.5 or below, that is in the acidic range. Sodium carbonate and potassium carbonate are basic substances (because the result of their partial hydrolysis in water is sodium hydroxide or potassium hydroxide and hydrocarbonic acid where the "hydroxide" is a much stronger base than the correspondic acid). Therefore, neither the dough nor the fried or air dried noodles of the *Teh et al.* reference are likely to have an acidic pH below 6.5.

The *Teh et al.* reference is also entirely silent about decreasing acrylamide formation. As noted above, the present claims substantively distinguish from the subject matter of the *Teh et al.* reference. Because of the entirely different pH status in the reference and in the claimed subject matter, the *Teh et al.* reference is highly unlikely to inherently produce the same result as the claimed subject matter. Even if it did, it would not be accomplished by the same method and the product would not be the same. For these reasons a person of ordinary skill in the art does not receive any suggestion from this reference to use the method of the present invention to prepare a fried noodle product which has decreased acrylamide content.

In the Final Office Action of January 17, 2006 claims were rejected over United States Patent Nos. 5,500,236 (*Miller et al.*) and 5,543,168 (*Yamasaki et al.*). Neither of these patents addresses the issue of acrylamide formation by frying noodles. Moreover, as the applicant shows below these references are substantively distinguishable from the subject matter of the present claims.

The *Miller et al.* reference does not involve the preparation of fried noodles, and does not involve a step of frying. It involves air-drying of noodles. It is established in the Takayama declaration of record that noodles prepared in accordance with the *Miller et al.* reference do not

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contain acrylamide in significant or detectable amounts, and the reference is entire silent about acrylamide formation and/or the need for avoiding such formation.

Example 1 of the *Miller et al.* reference (specifically mentioned in one of the Office Actions) actually refers to a comparative test that is not in accordance with the *Miller et al.* method. Be that as it may, in this example the basic substances sodium carbonate, sodium phosphate and/or potassium carbonate are added to the dough. These substances will make the dough and the resulting air-dried noodles basic, not acidic, as in accordance with the present claims.

Although *Miller et al.* cursorily mentions adding acid (Column 8, line 14), the acid is added as part of a flavor package and is added after the noodles have been air-dried. Moreover, the reference does not state anywhere that the added acid would bring the pH down to 6.5 or below.

“‘[T]he dispositive question regarding anticipation is whether one skilled in the art would reasonably understand or infer from the prior art reference’s teaching that every claim [limitation] was disclosed in that single reference.’ *Dayco Prods., Inc. v. Total Containment, Inc.*, F.3d 1358, 1368 (Fed. Cir. 2003).

Therefore, the present claims are substantively distinguished from the *Miller et al.* reference. From this reference a person of ordinary skill in the art would receive no suggestion whatsoever to minimize acrylamide formation by using the presently claimed method.

The gist of the *Yamasaki et al.* reference is that an alkaline agent is added to the noodle material to bring the pH into the alkaline range of 6.5 to 9.0 (see Column 3, lines 12 – 24 and the Examples provided in Columns 5 et seq.) Making the dough material alkaline is, of course, directly contrary to the method claimed in the present invention. Only after “gelatinization” by

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steam-heating, steaming, boiling or the like, is an acid solution added to the noodles to make them acidic.

A comparison of a fresh noodle usually sold in a cool, controlled temperature environment in a retail store and a fried (dehydrated) ramen noodle sold, for example, at room temperature in a serving Styrofoam cup to enable reconstitution with the addition of boiling water of the present invention is as follows:

Fried Noodle

Blending Water/Wheat Flour
Mixing
Extent to dough sheet
Cut to noodle strings
Cooked by steam for about 1 minute
Seasoned by seasoning water
Cut to proper length
Deep fat fried in fryer
Dry and insert fried noodle in package with seasonings
Sell at room temperature with extended shelf life

Yamasaki's Noodle (Fresh Type)

Blending Water/Wheat Flour
Mixing
Extent to dough sheet
Cut to noodle strings
Cooked by steam for about 1 minute
Cut and pack in a plastic bag
Add some seasoning and acid
Sterilized by hot water or steam
Store at cool temperature for sale

In the so-called second method of the reference (see Column 4, lines 19 - 23, and Examples 4 and 5) the "gelatinization is said to be conducted after addition of "acid." But the amount of acid added is very small (1 g/l in Example 4 and 5) which is followed after boiling by adding a much larger amount of acid (11.5 g/l, see Column 5 line 41, Column 6, line 66 and Column 7, line 33). In Example 1 the amount of lactic acid added while boiling is a miniscule 0.05 g/l (Column 5, line 36). It is respectfully submitted that the amounts of lactic acid added to the noodle material before the "gelatinization," namely before the real heating step, is insufficient to bring the pH below 6.5 especially because previously the pH was made quite alkaline by adding the basic substances.

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Therefore, the *Yamasaki et al.* reference is also substantively distinguished from the subject matter of the present claims. Moreover, a person of ordinary skill in the art would receive absolutely no hint or suggestion from this reference to apply the presently claimed method to make fried noodles of decreased or minimized acrylamide content.

In light of the foregoing, all outstanding claims of the above-identified application are believed to be in *prima facie* allowable condition and their early allowance is respectfully solicited.

In the event the Examiner is of the opinion that a telephone conference with the undersigned attorney would materially facilitate the final disposition of this case, she is respectfully requested to telephone the undersigned attorney at the below listed telephone number.

I hereby certify that this correspondence is being transmitted via facsimile to the USPTO at 571-273-8300 on September 6, 2006.

Very truly yours,

SNELL & WILMER L.L.P.

By: Sharon Farnus

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Signature

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